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# Supreme Court of the United States

No. 803

REPLY BRIEF FOR PETITIONER

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960.

No. 803.

ERNEST J. SAUBER,

*Petitioner,*

*vs.*

HOWARD B. GLIEDMAN,

*Respondent.*

## REPLY BRIEF FOR PETITIONER.

Respondent asserts that he is immune from civil responsibility for defamation because he "was the representative of The Attorney General and held the responsibilities, duties and discretion of the Attorney General" (Opp. Br., pp. 11-13). This is supposed to follow because respondent was "charged" with the prosecution (Opp. Br., p. 11). Herein is the core of the answer to the instant petition.

Respondent was not in "charge" of anything. The Olney affidavit (App. 19) attempts to supply the omission of such authority. Respondent concedes that it is "not conclusive on the courts" (Opp. Br., p. 13). A special assistant is limited to the duties set forth in his letter of authority (Cases cited fn. 2, Pet. p. 7). Respondent was but "to assist in the trial" and "file . . . and conduct . . . proceedings . . . which district attorneys are authorized to conduct". (Letter of Authority, Pet.,

App. C., p. 22) and only this he swore to do (Oath of Office, Pet. App. C., p. 24).

A specially appointed Department of Justice trial attorney, appointed to *assist* a United States Attorney who has disqualified himself, does not have the "responsibilities, duties and discretion of the Attorney General" (Opp. Br., p. 12), much less absolute privilege for his utterances. Attorney General Rogers did not understand that *Barr* gave absolute privilege to departmental heads for their "press releases" (Memorandum, Pet. App. D., p. 25), much less to those of his special assistants with no permanent geographical status to render them responsible to the community and therefor circumspect in their public utterances.

Respondent assert, in effect, that there is absolute privilege for *every* utterance of a government attorney. The traditional role and duties of a prosecutor are not only ignored, they are stated to be irrelevant (Opp. Br., p. 12). Gliedman's commission directs him to conduct the government's business as a lawyer, nothing more. This he plainly did not do. He struck "foul", not "hard blows" (*Berger* v. *U. S.*, 295 U. S. 78, 88).

Nothing in any of the several opinions in *Barr* can be read in a context granting an absolute privilege to a federal prosecutor to defame an accused, whose individual rights and liberties he is sworn to observe and sustain. Contrariwise, our fundamental political philosophy and professional tradition alike negate such an alien doctrine.

We, again, respectfully submit that this petition should be granted.

Respectfully submitted,

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